

1 BUCHALTER NEMER
ROBERT E. IZMIRIAN (SBN: 53805)
2 CRAIG C. CHIANG (SBN: 209602)
A Professional Corporation
3 55 Second Street, Suite 1700
San Francisco, CA 94105-3493
4 Telephone: (415) 227-0900
Fax: (415) 227-0770
5 Email: rizmirian@buchalter.com; cchiang@buchalter.com

6 Attorneys for Chapter 11 Trustee
KYLE EVERETT
7

8
9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **OAKLAND DIVISION**

12 In re

13 PACIFIC THOMAS CORPORATION, dba
14 PACIFIC THOMAS CAPITAL, dba
SAFE STORAGE,

15 Debtor.
16

Case No. 12-46534 MEH

Chapter 11

**DECLARATION OF CHAPTER 11
TRUSTEE KYLE EVERETT IN
SUPPORT OF MOTION TO SELL REAL
PROPERTY FREE AND CLEAR OF
CERTAIN INTERESTS**

Date: June 27, 2013

Time: 10:30 a.m.

Place: Courtroom, Hon. M. Elaine Hammond
1300 Clay Street-Courtroom 215
Oakland, California

17
18
19
20 I, Kyle Everett, declare as follows:

21 1. On January 16, 2013, the Bankruptcy Court entered its Order Approving
22 Appointment of Trustee, pursuant to which I became the duly appointed, qualified and acting
23 Chapter 11 trustee (the "Trustee") of the bankruptcy estate of the Pacific Thomas Corporation dba
24 Pacific Thomas Capital dba Safe Storage ("PTC").

25 2. Property of PTC's bankruptcy estate includes the real property located at 2615 E.
26 12th Street, 2783 E. 12th Street, 2801 E. 12th Street, 1111 29th Avenue, 1113-15 29th Avenue, and
27 adjacent, as well as nearby, parking lots, in Oakland, California (the "Property"). The Property
28

1 houses tenants Performance Contracting, Inc., Budget Truck Rental, Avila Trucking, Mujeres
2 Unidas Activis, local contractor parking, and others, and contains eleven additional buildings that
3 are utilized as self-storage facilities (the “Self-Storage Facility”).

4 3. I seek an order pursuant to 11 U.S.C. §363(f) allowing me to sell the Property free
5 and clear of any interest in the Property claimed by Pacific Trading Ventures or Pacific Trading
6 Ventures, Ltd. (collectively, “PTV”) including any leasehold or possessory interest, pursuant to
7 §363(f)(4) (the “Disputed Interest”).

8 4. I filed suit against PTV, Jill Worsley, and Randall Whitney (the “Defendants”) to
9 address the Defendants’ disputed assertion that PTC leases the Self-Storage Facility to PTV,
10 when PTV instead served as the manager of the Self-Storage Facility on PTC’s behalf. Under a
11 purported lease of the Self-Storage Facility, PTV takes all rents generated from the Self-Storage
12 Facility, estimated at \$110,000 to \$120,000 each month, and turns over no more than \$70,000 to
13 PTC’s estate.

14 5. On April 11, 2013, I filed my Complaint for Declaratory Relief, et al. (the
15 “Complaint”) commencing an adversary proceeding (the “Adversary Proceeding”) seeking a
16 declaration that there is no valid lease of the Self-Storage Facility to PTV. The Complaint is
17 attached hereto as Exhibit A.

18 6. On May 22, 2013, PTV and Jill Worsley filed their Answer to the Complaint (the
19 “Answer”).

20 7. In the Answer, PTV and Worsley asserted that, on or about January 1, 2005, PTC
21 and PTV entered into a 5-year written Lease of Improved Industrial/Commercial Property (the
22 “2005 Lease”), through which PTV agreed to lease the Self-Storage Facility and a portion of the
23 Morse Building, consisting of 1,500 square feet, located at 2783 East 12th Street, Oakland,
24 California. [Answer, ¶17].

25 8. In the Answer, PTV and Worsley denied that, on or about January 1, 2008, PTC
26 and PTV entered into a 5-year written Lease of Improved Industrial/Commercial Property (the
27 “2008 Lease”), through which PTV agreed to lease a portion of the Morse Building, consisting of
28

1,500 square feet, located at 2783 East 12th Street, Oakland, California. [Answer, ¶18].

9. I contest the validity of the 2005 Lease, and maintain that PTV instead serves as the manager of the Self-Storage Facility on PTC's behalf, based on the following facts:

- a. Jill Worsley is the Secretary of the Board of PTC and the Chief Operating Officer of PTV. PTV serves as the manager of PTC's Self-Storage Facility through a Management Agreement dated as of January 9, 2003 (the "Management Agreement"). The Management Agreement provides for PTV to "serve as the property manager of **PTC's entire self-storage facility**...." (Emphasis added). The Management Agreement, as amended on January 1, 2011, provides for compensation of the greater of \$2,000 per month or 6% of gross revenue.
- b. To date, PTV has failed and refused to turn over the rents generated from the Self-Storage Facility, claiming (1) that PTC leased the entire Self-Storage Facility and 1500 square feet of the Morse Building to PTV pursuant to the 2005 Lease, and (2) that the 2005 Lease allows PTV to keep all Safe Storage Facility rents, estimated at \$110,000 to \$120,000 each month, in return for \$70,000, a figure provided in a lease modification dated August 1, 2012, that PTC and PTV entered into *less than one week before PTC's August 6, 2012 bankruptcy filing*.
- c. Based on my review of the 2010 and 2011 income tax returns and QuickBooks for PTC, the operations of the Self-Storage Facility have been included in PTC's sworn income tax statements, with (a) all storage tenant rents deposited into PTC's bank accounts; (b) all expenses of the Self-Storage Facility operations included in PTC's income tax returns, including a management fee paid to PTV on account of the storage tenant rents, and (c) the land, buildings, fixtures, computers and equipment associated with the Self-Storage Facility included in PTC's income tax returns. Statement 4 of the 2010 tax return includes the expense "Legal & Accounting" of \$148,211; this includes \$130,689 of management fees for PTV which includes the Safe Storage properties. Statement 4 of the 2011 tax return

1 includes the expense "Legal & Accounting" of \$125,491; this includes \$83,515 of
2 management fees for PTV which includes the Safe Storage properties.

3 d. Relevant pages of PTC's 2010 and 2011 income tax returns are attached hereto as
4 Exhibit B.

5 e. I am informed and believe that both Randall Whitney and Jill Worsley executed a
6 Promissory Note dated July 27, 2007, on behalf of the Borrower, Pacific Thomas
7 Corporation, that states: "[Summit] Bank to approve all leases and tenancies
8 affecting the property, and all documentation in connection to the leases entered
9 into by Borrower prior to closing. Prior to closing Borrower shall provide to
10 Bank, on Bank's form, executed estoppel certificates and non-disturbance and
11 subordinations agreements form (sic) each tenants with the exception of self-
12 storage tenants if applicable. As of 7-16-07, Borrower does not have tenants."
13 (Emphasis added.) A copy of the Promissory Note is attached hereto as Exhibit C.

14 f. At the January 7, 2013 hearing on the Court's Order to Appear and Show Cause
15 why a Chapter 11 Trustee should not be appointed, Randall Whitney
16 acknowledged and authenticated his and Jill Worsley's signatures to a lease dated
17 2008 between PTC and PTV that includes only 1500 square feet of the Morse
18 Building located at 2783 East 12th Street and does not include the Safe Storage
19 Facility (the "2008 Lease").

20 10. The 2008 Lease, which was authenticated by PTC, is entirely inconsistent with the
21 2005 Lease. The 2005 Lease states that it is for a term of five years and includes the lease of
22 1500 square feet at the Morse Building.

1 I declare under penalty of perjury that the above statements are true and that if called as a
2 witness I could and would testify to their truthfulness. This declaration is executed on the 30th
3 day of May 2013 in San Francisco, California.
4

5 /s/ Kyle Everett
6 KYLE EVERETT
7 Chapter 11 Trustee
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28